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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,118	03/24/2004	Zachary D. Wiseman	'120-001-1'	3669

7590 12/14/2006

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EXAMINER

REESE, DAVID C

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/807,118

Applicant(s)

WISEMAN, ZACHARY D

Examiner

David C. Reese

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-5, 10, 11, 13 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-5, 10, 11, 13 and 22-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/25/2006 has been entered. Consequently, the following is the current listing of claims in the instant application:

Status of Claims

- Claims 1-2, 6-9, 15-21 were canceled.
- Claims 22-26 were added.
- Claims 3-5, 10-11, and 13 were amended.
- Claims 3-5, 10-11, 13, and 22-26 are pending.

Allowable Subject Matter

[1] The indicated allowability of claims 9 (now incorporated into claim 22) is withdrawn in view of the newly discovered reference(s) to Delaney, US-2005/0148809. Rejections based on the newly cited reference(s) follow.

Drawings

[2] The drawing(s) were previously objected for informalities. In view of Applicant's replacement drawing(s) submitted on 9/25/2006, all previous objection(s) to the drawings have been withdrawn. Accordingly, the changes have been entered.

Claim Rejections - 35 USC § 102

[3] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[4] Claims 3-5, 8, 10-14, and 22-26 are rejected under 35 U.S.C. 102(e) as clearly anticipated by Delaney, US-2005/0148809.

The shape and appearance of Delaney is identical in all material respects to that of the claimed design, *Hupp v. Siroflex of America Inc.*, 122 F.3d 1456, 43 USPQ2d 1887 (Fed. Cir. 1997).

As for Claim 22, Delaney discloses of an articulated band (Figs. 1-5), comprising:

a plurality of spherically-configured magnetic components (10D, from col. 2, end of [0022], “The links are provided with vertical as well as horizontal magnetic fields, allowing the wearer to interchange shapes and sizes. Any of the wide variety of shapes, colors, sizes and textures can be linked together to form the jewelry” and from page 3, from [0045], “The user would choose the shape, color, and texture of individual magnetic links 10A-10E, which they prefer. The shapes, which may be a cube 10A, a cylinder or rod 10D and 10E, a sphere 10C...”) having surface contour means defined upon each one of said plurality of spherically-configured magnetic components for defining point-to-point contact loci permitting universal rotational movement, around three mutually orthogonal axes, of each one of said plurality of spherically-configured magnetic components (10D) with respect to an adjacent one of said plurality of spherically-configured magnetic components (10D) when each one of said plurality of

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spherically-configured magnetic components (10D) is operatively connected to an adjacent one of said plurality of spherically-configured magnetic components (10D, as shown in Fig. 2);

first and second opposite magnetic poles defined within opposite ends of each one of said plurality of spherically-configured magnetic components (10D) so as to permit any one of said plurality of spherically-configured magnetic components (10D) to be magnetically attracted toward and operatively connected to any other one of said plurality of spherically-configured magnetic components (10D) when a first one of said opposite magnetic poles of said any one of said plurality of spherically-configured magnetic components (10D) is operatively engaged with a second one of said opposite magnetic poles of said any other one of said plurality of spherically-configured magnetic components (10D as shown in Fig. 2)); and

a plurality of ferromagnetic components (10E, as shown in Fig. 2) magnetically attracted and attached to at least one pair of adjacent ones of said plurality of spherically-configured magnetic components (10D) as a result of being disposed within at least one annular array defined around at least one of said point-to-point contact loci defined between said at least one pair of adjacent ones of said plurality of spherically-configured magnetic components (10D) magnetically connected together at said point-to-point contact loci.

Re: Claim 3, wherein said articulated band comprises a continuous, uninterrupted, endless loop (as shown in Figs. 1, 4-5).

Re: Claim 4, said endless loop comprises a jewelry item selected from the group comprising a necklace, a bracelet (Fig. 1), a ring (Fig. 1), and an earring.

Re: Claim 5, wherein each one of said plurality of magnetic components (10D) has the same diametrical extent.

Re: Claim 10, wherein each one of said plurality of spherically-configured magnetic components (10D) has a predetermined diametrical extent; and

said at least one annular array of ferromagnetic components (10E) has a predetermined diametrical extent which is substantially the same as said predetermined diametrical extent of each one of said plurality of spherically-configured magnetic components (10D).

Re: Claim 11, wherein each one of said magnetic components (10D) has a coating disposed upon the respective external surface portions thereof which is selected from the group comprising protective and decorative coatings (see middle of [0045]).

Re: Claim 12, wherein said coating is selected from the group comprising gold (see middle of [0045]), silver, platinum, copper, chromium, rhodium, plastics, nickel, and enamels.

Re: Claim 13, wherein each one of said magnetic components (10D), and each one of said ferromagnetic components (10E), has a coating disposed upon the respective external surface portions thereof which is selected from the group comprising protective and decorative coatings (see middle of [0045]).

Re: Claim 14, wherein said coating is selected from the group comprising gold (see middle of [0045]), silver, platinum, copper, chromium, rhodium, plastics, nickel, and enamels.

Re: Claim 23, wherein said plurality of ferromagnetic components (10E), disposed within at least one annular array defined around said at least one of said point-to-point contact loci defined between said at least one pair of adjacent ones of said plurality of spherically-configured magnetic components (10D) magnetically connected together at said point-to-point contact loci, are disposed within a plurality of annular arrays defined around a plurality of said point-to-point contact loci defined between a plurality of pairs of adjacent ones of said plurality of spherically-

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configured magnetic components (10D) magnetically connected together at said point-to-point contact loci.

Re: Claim 24, wherein each one of said plurality of spherically-configured magnetic components (10D) has a predetermined diametrical extent; and each one of said plurality of annular arrays of ferromagnetic components (10E) has a predetermined diametrical extent which is substantially the same as said predetermined diametrical extent of each one of said plurality of spherically-configured magnetic components (10D).

Re: Claim 25, said plurality of annular arrays of said ferromagnetic components (10E), defined around said plurality of said point-to-point contact loci defined between said plurality of pairs of adjacent ones of said plurality of spherically-configured magnetic components (10D) magnetically connected together at said plurality of point-to-point contact loci, are respectively disposed around each one of said point-to-point contact loci defined between each pair of adjacent ones of said plurality of spherically-configured magnetic components (10D) magnetically connected together at said point-to-point contact loci.

Re: Claim 26, each one of said plurality of spherically-configured magnetic components (10D) has a predetermined diametrical extent; and each one of said plurality of annular arrays of ferromagnetic components (10E) has a predetermined diametrical extent which is substantially the same as said predetermined diametrical extent of each one of said plurality of spherically-configured magnetic components (10D).

Response to Arguments

[5] Applicant's amendment and remarks, see amendment and remarks filed 9/25/2006, with respect to the rejection(s) of claim(s) under Fukuda, US-2004/0126621, have been fully

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considered. Therefore, the rejection with regard to Fukuda has been withdrawn. However, as stated above in the beginning of the action, a new ground(s) of rejection is made in view of Delaney, US-2005/0148809. Consequently, all arguments are considered moot to said new grounds of rejection.

Conclusion

[6] THIS ACTION IS NON-FINAL


[7] The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

[8] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272-7082. The examiner can normally be reached on 7:30 am-6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached at (571) 272-7075. The fax number for the organization where this application or proceeding is assigned is the following: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DCR


11/29/06

David Reese
Assistant Examiner
Art Unit 3677


ROBERT J. SANDY
PRIMARY EXAMINER